Forensic Exam Notes

Forensic psychology (Swinburne University of Technology)

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Topic 3: Crime rates: objective and subjective

- Sources of objective crime rates
- Australian/Victorian crime rates – not examinable
- Subjective perceptions of crime & rates
- Fear of crime theories

→ Cultivation theory
→ Cognitive theory
→ Social cognition model

Introduction

- Importance of examining the relationship between objective and subjective reality (e.g. increased patrols in the UK study)
- Importance of understanding why we need information on crime rates
- Is objective or subjective crime information more important?
- Does a crime have to be perceived to exist? If the victim or offender don't see the crime as an offence, is it?

Sources of objective crime data

- Public experience – surveys which ask people to estimate their experience of crime during a specified time period (under or over)
- Police records – includes crime reports as well as recorded crimes (underrepresentation)
- Court statistics – composed of data on the number and type of court cases (underrepresentation)
- Prison statistics – composed of data on the number of prisoners and the crimes for which they were sentenced (underrepresentation)
- Offender surveys – gather information on number and type of offences (non reliable – they'll look really friendly and like they're trying to help you but really they're lying)

Objective crime rates

General challenges:

- Definitions of crime
- Accurate recording (cite non-recording, missing persons)
- Multiple recording – e.g. 1 person charged with 6 offences of the same act (90% of crimes are generally committed by 10% of the population)
- Crime based vs. person based – record number of crimes rather than number of people committing crimes

Subjective perceptions of crime

- Are often very different from actual (objective) crime rates
- Are very important for a variety of lifestyle decisions such as where to live, where to visit, where to go to school
- Are heavily influenced by "framing"

Fear of crime theories

Cultivation theory

- Suggests that heavy consumption of mass media (4 hours a day or more) leads to an unrealistic perception of crime rates and a subsequent higher level of fear of crime

Cognitive theory

- Suggests that fear of crime is the product of a cognitive calculation of 2 factors: (1) the strength of belief about the likelihood of an event, and (2) the perceived level of seriousness of experiencing the event

Social cognition model: Fear of crime

- The social cognition model argues that you can gain an understanding of how people make *judgments* by examining how they employ a variety of *cognitive processes* to evaluate *social information*
- Based on a computer model
- Assumes that the computer model represents the objective (desirable) approach
- Assumes that humans are cognitive misers (don't want to spend any more than they have to)
- Cognitive miser – a normal tendency for humans to spend as little cognitive effort as possible on tasks unless provided with adequate *opportunity* and *motivation*

Computer model

Input → processing → output

Social cognition model

Input → processing → output → judgment → behaviour
Biases Biases Biases

*Input biases ***

- Vividness – when making a decision, the tendency to place extra cognitive weight on information that is bizarre, abnormal or dramatic
- Negativity – when making a decision, the tendency to place extra cognitive weight on information that portrays individuals, issues, and objects in a less favourable light
- Perseverance – when making a decision, the tendency to place extra cognitive weight on information, even after it has been proven to be false (e.g. find out news about someone but it turns out the news was about someone else… information still influences the first person)
- Primacy – when making decisions, the tendency to place extra cognitive weight on earlier information and less cognitive weight on later information
- Availability – when making a decision, the tendency to place more cognitive weight on information that is readily available compared to information that must be sought out

Processing biases

- Representative heuristic – when making a decision, the tendency to employ emotionally – evoking stimuli and false beliefs rather than logical and common sense (e.g. Gambler's Fallacy)
- Illusory correlation – when making a decision, the tendency to believe that two events are causally related simply due to the fact that they occur within close proximity (bases for human superstition – ritual before game)
- Simulation heuristic – when making a decision, the tendency to spend less cognitive effort on situations where one cannot imagine themselves ever being in
- False consensus – when making a decision, the tendency to believe that one's position is reflective of the majority (everyone does it)
- Priming – when making a decision, the tendency to be influenced by unrelated stimuli or memories
- Framing – when making a decision, the tendency to be influenced by concentration on a cognitive anchor and then framing the decision around that anchor

Output biases

- Response bias – the tendency to behave contrary to one's decision due to social influences
- Functional fixedness – the inability to apply a logical decision due to the cognitive categorization one holds about another person

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Topic 4: Criminal Investigation I: Memory & Eyewitnesses

- Memory (cognitive) – overview
- Eyewitness information
  - Input (witness/situation)
  - Storage
  - Output (recall & recognition)
- Eyewitness identification
  - Line-ups
  - Photo spreads

Memory overview

Types of memory:

- Sensory memory: refers to the very short duration for which sense-based information is held post-exposure
- Short term memory: refers to the limited amount of information (7+ or -2 meaningful units) which can be stored without rehearsal for a short duration (approx. 30 seconds) 211217761992 – 2112, 1776, 1992 chunking
- Long term memory: refers to the almost unlimited of information which can be stored over a lifetime with rehearsal – more likely to stay long-term if you encode and store it correctly
- For essay: little time on sensory & short-term, focus more strongly on long-term
- The reliability of information is an important factor across the forensic domain, including:
  - Assisting police to identify a suspect
  - Assisting police to confirm the identity of an alleged offender
  - Providing testimony at trials
- Reliability is generally assessed according to the memory model
- Confidence & reliability – do not interact each other
- Recall vs. recognition
  - Recognition: is the ability to elicit scored material (i.e., a memory) through the use of a cue (e.g., multiple choice, line up etc.)
  - Recall – is the ability to elicit stored material (i.e., a memory) without *externally providing* any type of cue (e.g., short-answer Q)

Computer memory model

Input → Storage → output

Eyewitness information

Input: factors related to the input aspects of eyewitness reliability may be separated into witness and situation categories:

- Witness:
  - Age, gender, race, intelligence, personality
- Situation
  - Stress/arousal (e.g. at a football game – can be used by lawyers to say the eye witness isn't reliable)
  - Event duration
  - Weapons effect (if person is pointing a gun at you, are you going to remember the facial features?)
  - Frequency (saw it once vs. saw it 10 times)
  - Illumination – too dark, too light, dusk/dawn

<u>Input</u>

Age

- Free recall differences (as people get older, your ability to recognise material doesn't change, but your ability to recall something will go down)
- Line-up identification (recognition) differences – stay similar
- Suggestibility differences – younger & older populations are more suggestible

Gender

- Slight recall difference based on stereotyped activities - females more likely to remember female stereotyped memories and same with males (e.g. changing tyre better than bake a bake)

Race

- Cross-race recognition differences (people are better at recognising individuals of races they have a lot of experience with)

Intelligence

- Cross-race recognition

Personality

- Recall and recognition difference for high self-monitors

Stress/arousal

- Recognition and recall impact based on Yerkes-Dodson principle – moderate stress the best (very relaxed – won't remember, too stressed – won't remember)

Event duration

- Recall difference at approximately 30 seconds

Weapons effect

- Recall and recognition differences – more focus on weapon and less on faces

Frequency

- Recognition difference

Illumination

- Recall and recognition differences according to the Yerkes-Dodson principle (especially problematic during twilight hours)

<u>Storage</u>

Passage of time

- Recall and recognition differences

Rehearsal

- Recall and recognition differences (for both under and over rehearsal)

Meaning/simulation heuristic

- Recall and recognition differences (people can relate to situations where they could possibly be in)

Post-event information

- Issue of "planted memories"

<u>Output</u>

Type of questioning:

- Free recall vs. prompting questions

Confidence

- No differences in confidence levels

Use of interview protocols

- Less bias with formal protocols

False memories

- Linked to Freudian theory of repressed memories & suggestibility

Eyewitness identification

Identification procedures

- Show up
- Live line-up

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- Photo line-up

Photo line-up construction/process
- Usually 1 target and 5 foils
- Foils should resemble target (difficult if target has changed-way he looked when he did it or what he looks like now) as much as possible
- Target should be placed in a random position
- Instructions should indicate that suspect may not be present in line up
- Sequential vs. simultaneously presentation (all 6 at once or one at a time)

Topic 5: Criminal Investigation II: Offender Profiling

- ❖ Introduction
- ❖ Definition of psychological profiling
- ❖ Basic tenets
- ❖ Clinical profiling model (FBI)
- Male serial killing typology
- ❖ Experimental/statistical model

Definition

The scientific analysis of trace psychological evidence in order to assist with the detection, suppression, and knowledge of criminal behaviour.

Specific users
- Detection of offenders
- Distribution of resources (patrols, etc.)
- Public education and safety

Basic tenets
- Use of models and theories related to abnormal psychology (e.g. psychological disorders)
- Use of models and theories related to normal psychology (e.g. trait theory decision-making)
- Use of personal insight (don't want to believe that they're anything like me)

Profiling models
- Employed for serial offending (3 or more separate yet related events)
- Clinical model – FBI (US) – goal is to create a psychological profile of the offender
- Experimental/statistical model (UK) – goal is to create a statistically-based profile of factors related to the location of the offender and his/her crimes

FBI profiling process – clinical model

Is compromised of a 4-stage process:

Stage 1: data assimilation stage
- Gathering and assimilating all available data that might be related to the case (e.g. police reports, crime scene photos, pathologist reports)
- Attempt to identify the offender's modus operandi (MO) and/or signature
- *Modus Operandi (MO) – refers to particular way by which a person performs a particular task (e.g. how one studies for examinations, how one gets to uni etc.) e.g. lighting fires is the task*
- *Signature – a specific and identifiable action or characteristic of the offender that reflects their nature (offender saying "this is me" e.g. graffiti artists, what is their art saying? MO = what time, what place etc.)*

Stage 2: Crime scene classification
- Examination of the crime scene in order to ascertain whether the scene is representative of an organized or disorganized offender

Stage 3: Crime scene reconstruction
- Use of information gathered in stages 1 & 2 to reconstruct the crime scene in a way that allows for deciding whether the offender is organized or disorganized

Organized vs. disorganized offenders
- Organized offender
- Average to above average intelligence
- Socially and sexually competent
- High birth order (1st & 2nd born = more dominant, powerful, ambitious, outgoing)
- Skilled worker
- Controlled mood during crime
- Precipitating situational stress (major stressful event before kill (trigger events) for example
- Follows crime in the news
- May leave town after crime
- Disorganized offender
- Below average intelligence (80-100)
- Socially inadequate and sexually in competent
- Low to middle birth order
- Unskilled worker
- Anxious mood during crime
- Minimal situational stress (no trigger point)
- Doesn't follow crime in the news (embarrassed, upset etc)
- Lives/works near crime scene

Stage 4: profile generation
- Creation of an offender profile that includes physical elements as well as identifies related to their personality (e.g. is introverted and solitary therefore probably single)

Male serial killing typology
- *Visionary killers* – acting on perceived voices or images instructing him/her to kill a particular person (or type of person). Disorganized crime scene (chaotic)
- *Missionary killers* – motivated by a decision that a person (or type of person) is unacceptable or valueless and should therefore be removed (miss weapon, throat cutting)
- *Lust killers* – motivated by sex and is part of the process of fulfilling their sexual lusts. Evidence indicates sexual aspect.
- *Thrill killers* – motivated by the pleasure (thrill) they experience from the event. Generally includes evidence of prolonged torture.
- *Power/controlled killers* – motivated by the need to extend the ultimate control or power over a victim. May be reflected by type of weapon and location of offence

Experimental/statistical model profiling model

Step 1: Data
- Geographic location of crime (where & when they may strike again – doesn't focus on who the person is)
- Geographic location of related criminal activities (e.g. drop zones) – group meets somewhere before hand/where they leave the body etc.
- Temporal (time) aspects of crime – different calendars, moon changes etc.
- Forensic analysis of evidence

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- Time of day, day of week, location of crime, temperature, day of year etc.

Step 2: Identification of trends

Step 3: Alignment of trends with psychological knowledge

- Crime zone selection
- Drop zones & geographical knowledge
- Evidence and personality
- *Interpersonal coherence – belief that an individuals personality will align with their behaviours including their offending (who you are will impact what you do including offending)*

Step 4: Use of analysis

- Location of next crime
- Location of residence

Topic 6: Criminal investigation III: The Psychology of Questioning & Interviewing

- Introduction
- Elements of verbal & non-verbal communication
- Questioning & interviewing
- Forensic challenges

Introduction

Although the overarching goal is to acquire information, there are some important differences relating to who is being examined and how they are being examined.

Who do we need communication skills for? **Elements**

- Witnesses – questions/interviews
- Victims – questions/interviews
- Suspects – questions, interviews & interrogations

Questioning – goal is to encourage the person to provide you with reliable information related to an alleged offence

Interviewing – goal is to encourage the person to provide you with confirmation of known elements of an alleged offence in a formal setting (they know what happened they just want confirmation)

Interrogation – goal is to acquire a confession from an individual regarding an alleged offence

Related psychological principles

- Research in this area is base don the principles of communication (verbal & non-verbal)
- There is an emphasis on trying to evaluate the reliability of information and deliberate deception (dealing with motivated liars)

Verbal communication

Source

- Standard vs. non-standard speech style - refers to the degree to which an individual employs non-normative words and phrases (e.g. slang)
- Direct vs. indirect speech - refers to the degree to which an individual is explicit in their communication (e.g., gender differences – stereotypically men speak more direct and women speak more indirect)
- Powerful vs. non-powerful speech - refers to the degree to which an individual speaks with authority. Indicators

- Tag questions – inclusion of a question at the end of a statement (its really raining out there, isn't it?)
- Intensifiers – inclusion of words or phrases that over-emphasize the statement (you did very, very, fantastic on the exam)
- Hedges – inclusion of words or phrases that indicate a level of being unsure (it is sort of/kind of raining)

Target (listener)

- Perceptual set – suggests that a targets perception of a communication will be impacted by their current mindset (i.e., frame of mind) on what they "hear"
- Stress – suggests that a target's perception of a communication will be negatively impacted if they are too stressed OR too relaxed (Yerkes-Dodson principle)
- Cognitive overload – suggests that a target's perception of a communication will be negatively impacted if they are cognitively over-taxed

Non-verbal communication

- Paralanguage – non verbal cues of the voice (e.g., pauses, tones)
- Oculesics (eye contact) – generally revolves around length and intensity of contact. May be used to:

- Control conversation (dominance)
- Express emotion
- Indicate honesty/frankness (eye movement tells us the person is thinking)

- Kinesics (body language) – non-vocal body movements that express meaning
- Facial expression (Ekman) – eyebrows, mouth, cheeks (happy, sad, disgust etc.)
- *Gestures – specific signs or motions used to enhance communication*

- *Emblems: substitute for words and phrases*
- *Illustrators: accompany and reinforce verbal messages (saying bye and waving hand)*
- *Affect displays: indicate emotional meaning*
- *Regulators – assist in controlling conversation/interaction (mid way conversation saying stop with a hand up because I wanted to talk)*

Gestures → non-verbal → communication → interviews & then talk about the 4 gestures

- Proximics (interpersonal space – when people have choice)

- Intimate distance (15-45cm) – indicates a very high level of comfort and trust with the person
- Personal distance (46-100cm) – indicates a moderate level of trust and comfort with the person
- Social distance (1-4m) – indicates a professional level of interaction
- Public distance (4-8m) – indicates a formal level of interaction, including objectivity

- Haptics (touch) – depends on how the person intends the touch to be

- Positive: contact meant to convey approval (pat on back)
- Negative: contact meant to convey disapproval (smack)
- Control: contact meant to establish or maintain dominance (grabbing of arm)
- Playful: contact meant to convey fun (tickling)
- Ritualistic: contact initiated as part of a social convention (handshake)
- Task-related: contact related to the successful completion of an objective (dance positioning)

Questioning

- Establishing a rapport with the person
- Ensure questions are in fact questions
- Ensuring every question is specific and has a purpose
- Ensuring that any potential psychological barriers to communication are removed

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Interviewing
- Managing the environment
- Establishing control of the interaction
- Maintaining control of the interaction
- Detecting deception (same question in different ways)

Forensic challenges
- Deception – research indicates that, as a whole, serious offenders are very practiced at deception and are therefore difficult to read
- Lack of motivation – often difficult to accurately "read" offenders given that there is very little motivation for them to communicate with legal representatives (especially in the US)
- Self-monitoring – difficult to gain an accurate assessment based on communication if the individual is a high self-monitor and is motivated to engage in the process (i.e., wants something). Especially difficulty if you have sporadic opportunities to assess. High self-monitors:

1. Accurate and quick profilers – can gain an accurate and quick picture of an individual, usually through observation & effective questioning.
2. Effective actors – have an ability to alter who they appear to be based on who they are communicating with.
3. Willing & motivated – they are willing and motivated to engage in steps 1 & 2 in order to gain what they want.

- Best approach for "unmasking" a high self-monitor is the use of deep questions as well as intense or prolonged observation

<u>Topic 7: The Trial Process I: Pre-Trial Issues</u>
- Introduction
- The defendant
- Competence to stand trial
- The jury
- Change of venue
- Jury size
- Jury selection

Introduction
The overarching goal of most pre-trial procedures is to ensure that:
- The individuals involved in the trials are able to understand the basic elements of the judicial process
- The individuals involved in the trial are not impaired in their ability to competently participate
- The jury process is not impacted by the local environment or bias

The Defendant: competence to stand trial
Revolves around the issue of whether an individual is fully able to understand the situation.
Legal standard:
Whether the defendant has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him
Psychological aspects
- The basic concepts related to the trial (e.g. truth)
- The roles of the main actors in the trial
- Their legal/constitutional rights

Tests/assessments:
- Competency Assessment Instruments (e.g. Competency Screening Test)

The Jury
In cases where a jury is the *ultimate trier of fact,* it is important to ensure that it is an objective entity
Psychological research has been conducted in 3 areas related to pre-trial jury issues:
- Change of venue
- Jury size
- Jury selection

<u>Change of venue</u>
Revolves around the issue of ensuring that the trial takes place in a locale that is unbiased
Legal standard
In order to attain a change of venue, one must demonstrate that prejudicial pre-trial publicity or local knowledge and continuing passion must be so inflamed to make it nearly impossible to select an impartial jury
Psychological aspects:
- Empirical proof of prejudicial pre-trial publicity or local passion
- Empirical proof of the impact of the above
- Empirical proof of less impact at another venue

Tests/assessments:
- Five-step survey process

Presentation of public trial information (e.g., knowledge of trial participants, attitudes toward participants)

1. Reliable base rate sample – sample of eligible jurors from the community of interest
2. Reliable comparative sample – sample of eligible jurors from a random (yet similar) community
3. Questions – asking questions in similar to those asked within the legal context
4. Analysis – rigorous analysis of data (quantitative and qualitative)
5. Evidence – introducing the results through an expert

<u>Jury size</u>
Revolves around the issue of ensuring that the size of the jury does not cause disadvantage to trial participants
Legal standard:
It must be demonstrated that the size of the panel successfully fulfils the "purpose of the jury" (i.e., to act as a safeguard against prosecutorial and judicial bias or corruption)
Psychological aspects:
Research on Jury size (6 vs. 12)
- Smaller juries are less likely to provide a context for effective group deliberation than larger juries
- Non-guilty individuals are more likely to be convicted by smaller juries
- "Hold-outs" are more likely to change their vote without an ally and there is a lower likelihood of an ally in a smaller jury
- Smaller juries are less likely to represent a cross-section of society

Legal response:
- 6-member juries are allowed for civil cases
- 6-member juries are allowed for all criminal trials except capital trials
- 5-member juries are unconstitutional because the size violates the purpose of the jury

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Jury Selection & Alternative models (US)
** would listen to this lecture if I were you – Jeff

Main differentiation from the Victorian Model revolves around the approaches toward:
- Challenge for cause – removal of a juror based on proof demonstration of a bias that would impede their ability to be objective (attitude-behaviour question)
- Peremptory challenges – removal of a juror with no basis for dismissal required, just a bad feeling perhaps (limited number)

US Model:
Assumes that potential jurors cannot or will not identify their biases and that this may result in an inability to impartially assess the evidence (won't tell you or can't tell when they are). This results in:
- An expanded challenge for cause process in which attorneys are given wide latitude to question potential jurors in order to demonstrate their biases
- An expanded peremptory challenge process that is heavily informed by research and experts

Jury selection process
Revolves around the issue of ensuring that the members of the jury are not likely to employ "*extra-evidential*" factors in their decisions
- Using non evidential items as evidence (stereotypes, race, religion, culture, when both over 18)

Legal standard: goal of jury selection
To assemble a *representative cross-section* of the community and ensure that any pre-existing biases or prejudices *do not impact* their ability to fairly assess the evidence.

The venire process:
- Identification of potential jurors (e.g., health card registration, electoral rolls) random population selection – representative of the community (opportunity for regular people to have your say) 12 people selected to be jurors
- Notification to attend including questions relating to *exclusion* (disqualification/exemption based on age, citizenship etc.)
- Creation of a venire (jury pool) – anybody who is not excluded will go to court
- Removal from the venire relating to *excuses* (e.g., hardship – own business, single parent, lack of comprehension of the language of the court, I know someone in the case etc.)

The selection process: voir dire
- Purpose is to examine those in the venire to select the final 12 jurors – 12 MUST represent the whole community, if 12 jurors say guilty then 3.5 mill in Melbourne should say guilty as well
- Varies across jurisdictions (e.g., Australia, Canada, US)
- Each side may ask for the removal of an individual as a juror based on a *challenge for cause* (proof of a bias that would impeded the ability to be objective) or through a limited number of *peremptory challenges* (no basis for dismissal required)
- Voir dire and the death penalty (***Witherspoon Excludables*** – potential jurors who cannot give their word that they will impel the death penalty if necessary)

Psychological aspects:
Research on jury selection includes:
- Race
- SES
- Gender
- Attitudes and beliefs
- Political beliefs
- Cognitive factors
- Experiences with crime
- Facebook & other indicators

Topic 8: The trial process II: The Trial – Judges, Lawyers, Witness & Juries
- Introduction
- Juries – Attributions of causality
- Expert evidence
- Information regarding defendants
- Information regarding victims/witnesses
- Instructions
- Timing
- Comprehension
- Nullification

Introduction
Legal process:
- The *trier of fact* (who's making the final call) may be a judge or a jury
- Information includes testimony, exhibits, opening/closing statements, and judicial instructions
- Who gets to tell their story first? Defendant or prosecution
- (I heard, I saw, I tasted, I touched, I smelled) Witness is only allowed to report on their experience, not anyone else) If somebody else smelled it – bring them in
- Witnesses are generally questioned through an examination in chief and a cross-examination
- Special conditions are in place for identified vulnerable populations (i.e., children, organized crime witnesses)
- The presentation of evidence is followed by judicial instructions
- Deliberations
- Verdict
- Sentencing

Juries – working with them
Presentation of evidence (social psychology)
- Understand attitudes
- How to persuade people
- Social cognition & decision-making
- Attributions of causality – judgements about the genesis for the behaviour of ourselves or others (why did he do that… its because he's grumpy- that's the attribution)

Attributions of causality
Primary attribution (Heider) – when deciding the *cause* for the behaviour of *others who we do not know very well*, we have a tendency to make an immediate *dispositional (its because its who they are)* or *situational (it's the situation that made them do that)* judgment
Fundamental attribution error – when deciding on the cause for the negative behaviour of others (especially those we do not know well), we have a tendency to over-emphasize dispositional factors and under-emphasize situational factors
Actor/observer bias – when deciding on the cause for the behaviour of ourselves and others, we have a tendency to view our negative behaviours as situational and our positive

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behaviours as dispositional while doing the opposite for others

Expert evidence - very different to being a witness

In some instances, the court or one of the parties will request that evidence be provided to the trier of fact by an expert that may testify on opinion – no "confidentiality" required

- Expert can offer an opinion to the court, as a witness you cannot do that

Legal standard to be able to be an expert for a case:

- The qualification of an expert witness generally involves a three-part test (proved by lawyer)
- The subject matter is so complex or technical that it is beyond the ken of the average person
- The witness must be qualified must be qualified to speak to the issue at hand
- There must be scientific acceptance of the information presented by the witness (psychological knowledge that is accepted by community/psychologists)
- Psychological contribution:
- Introduction of data indicating a low level of public knowledge (or high levels of confusion) regarding the issue – a recent article by … shows that people don't actually know about this concept
- Academic qualifications (e.g., degrees)
- Publication record (your field is following the issue at hand)

Insanity

Legal standard: (law considers to be insane vs. psychology considers to be insane ??)

- Originally based on the McNaughton Rule (1843)
- Insanity based on 3 elements:
- The defendant was suffering from a "defect of reason from a disease of the mind," show biological basis or psychological disease
- As a result, the defendant did not know the nature and quality of the act he was doing
- An inquiry (psychological assessment) has been carried out to determine whether the defendant knew what he was doing was wrong
- Stay in a facility until 2 qualified psychiatrists say you can get out

<u>Model legal versions of insanity</u>

"A person is not responsible for criminal conduct if *at the time of the action*, as a result of *mental disease or defect*, he or she lacks *substantial capacity* either to appreciate the criminality (wrongfulness) of his or her conduct or to conform his or her conduct to the requirements of the law"

Psychological contributions:

Assessments are based on identification of psychological disorders (see italic areas above)

Life events – some life events allowed to bring in, and some not (allowed to ask)

- Culture (Tarasoff case)
- Sub-culture – alexander & Murdoch (difficult childhood – touch neighbourhoods etc.)
- Personality – cavallo (rape profile)
- Lifestyle (not considered currently) – Zamorra (TV) *

The court will generally not allow evidence that is made by choice (TV… personality?)

Psychology & Trial evidence: head vs. heart strategy

One of the first tactical decisions made by an attorney revolves around whether the presentation of evidence should be aimed at the cognitive level (head) or emotional level (heart)/ The decision is based on a number of variables, including:

- *Trier of fact*: cognitive approach is most often selected when the judge is the trier of fact. In cases of a jury, either approach may be effective
- *Level of emotional content in trial*: suggested that the higher the level of emotional content (e.g., children, vulnerable individuals, vivid impact) the more likely an emotional presentation will be successful
- *Jury demographic*: suggested that the composition of the jury may dictate the approach (e.g. business professionals, front-line human service providers = head, teachers, social workers = heart)
- *Stereotype of defendant*: If look the part (e.g. little girl as the victim) then play heart, or (teengarger covered in tattoos) then play head

Psychology & Trial evidence: Attorney tactics

Heavily based on the importance of narrative and may be manipulated through:

- *Vivid language* – the inclusion of vivid language is based on the input bias from the social cognition model and suggests that jurors will give more cognitive weight to vivid information (e.g. he lunged at me vs. he came toward me)
- *Repetition* – based on cognitive and social psychology principles (e.g. mere exposure effect) increase you're liking toward the stimulus
- *Loaded questions* – based on cognitive psychology principles and suggests that one may be able to subtly "implant" a particular concept in a person through the phrasing of the question (e.g., "did you see the broken window when you walked into the store" – indicates that the window was broken) Implants that it may have been broken
- *Subtle shifts in wording* – based on cognitive and social psychology principles and employed to subtly impact the meaning for a sequence if events (e.g., "he decided to sit with her" vs. "he decided to make a conscious decision to sit beside her")
- *Definitional tactics* – words and/or images employed by attorneys to "assist" jurors with how to define ambiguous concepts (e.g., not guilty question, beyond a reasonable doubt question)
- *Establishing and disrupting connections in the stories being told* – employed to assist jurors to see a smooth narrative in a witnesses' story or across the evidence OR to disrupt the smoothness of the story

Instructions

<u>Legal standard:</u>

- Instructions are provided by the presiding Judge (Magistrate) at the conclusion of the presentation of evidence and are meant to provide the jury with:
- A framework to guide their deliberations and decision (definitional instructions) – *least likely to be understood*
- Clarification of legal terms (substantive law instructions)
- A summary of the evidence (cautionary instructions) – *most likely to be understood*

<u>Psychological contributions:</u>

- Timing of instructions

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✓ Cognitive psychology research indicates the importance of providing pre-task instructions (however law instructions are provided after evidence…)
- Comprehension of instructions

✓ Research indicates that jurors are least likely to comprehend definitional instructions, followed by charging instructions, and most likely to comprehend cautionary instructions
- Nullification instructions (if you think the case is not representative of the law – you can ignore the law)

✓ Research indicates that the inclusion of a nullification instruction impacts decisions – especially in cases involving controversial social issues (e.g., euthanasia)

✓ Aren't given instructions as apparently it is "commonly known" (as a matter of fact it if they were given instruction there's worry jury will do whatever they want)

Topic 9: Sentencing & Diversion Programs

- Introduction
- Goals of sentencing
- Sentencing & psychological assessments
- Diversion/alternative sentencing programs

Introduction

The goal of sentencing is to try and establish the best possible option which takes into account:
- Community factors (e.g., safety)
- Needs of the victim
- Needs of the convicted person

One of the main decisions is whether the offender will receive a custodial, semi-custodial (e.g., house arrest), or a non-custodial sentence (e.g., probation)

Goals of sentencing

- Individual deterrence – goal is to stop the specific individual from engaging in *the same offending* behaviour in the future (massive penalty)
- General deterrence – goal is to stop similar others from engaging in a *similar* offending behaviour (shame people)
- Incapacitation – goal is stop the specific individual from engaging in *all* offending behaviour by placing them in a secure environment
- Retribution – goal is to "take" something of equal value from the offending individual
- Rehabilitation – goal is to try and change the individual so they no longer wish to engage in offending behaviour
- Moral outrage – goal is to provide society with a way to vent their frustration, anger, and/or outrage at being victimized

Sentencing & psychological assessments: underlying principles

- Much of the research is US based
- A significant amount of forensic assessment revolves around:

✓ Assessments of risk

✓ Assessment of elements specifically related to important forensic issues
- It is a legally-driven process (judge decides not psychologists)

Types of post-conviction assessments

Post-conviction assessments may be carried out for a number of reasons, including:
- Placement – to establish the environment and type of service that best reflects the needs of society and the needs of the offender (e.g., level of service inventory – LSI, tells what prison to go to, what programming he needs etc.)
- Dangerousness – to establish how much of a danger the offender is to both himself and others (e.g. Psychopathy checklist prevised – PCL-R; however politicians, extremely successful business people have also found to score very high)

Diversion/alternative sentencing programs

These programs are generally employed for offenders that are *not considered to be dangerous to self or others* and take into account factors such as diversity and research on dealing with specific offences

Example of programs:
- Drug courts – for non-violent substance abusing offenders (generally first offenders). Goal is to provide a forum in which everyone (e.g., prosecutor, judge, defence, social services, law enforcement) attempts to work together to provide the best possible post-conviction environment for the offender
- Sentencing circles – generally employed for indigenous offenders. Goal is to provide a community-based forum (e.g. Elders, community members, victim, family members) that meet to work with judiciary to create an effective sentence that will best ensure that the offender will not re-offend

Indigenous healing themes
- Respect for oneself (spirit and body)
- Respect for Elders
- Respect for the community
- Respect for the land
- Respect for the spiritual guide (e.g., the Creator)

The rehabilitation process & offenders: challenges cited by indigenous clients
- Cost
- Transportation
- Child care/other responsibilities
- Time off from work
- Peer/family non-support and/or ridicule
- Non-relevant therapeutic approach (white counselling)
- Lack of understanding/identification/empathy on the part of MH specialist
- Confusion regarding cultural beliefs to MH and crime

Topic 10: Corrections & rehabilitation

- Introduction
- History of penology & psychology
- **Cognitive skills programs**
- Alternative correctional programs

- Offence-based units
- Faith-based units
- Culture-based units

- Parole
- Forensic psychology: the future?

Introduction

The overarching goals of most custodial institutions are:
- To ensure the safety of the individual
- To ensure the safety of the community (barb wire, fences)
- To provide programming opportunities for the rehabilitation of offenders (very little money left over, so much on safety & security)

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History of penology & psychology

- Pre-1450: possession by Demons Era

Cause → abnormal behaviour (including criminal behaviour) believed to be due to the physical possession by a demon of some kind

Response → removal of the demon

Trephining (hole in head) Prehistoric & 1700's

- 1450 to 1750: possession by the Devil Era

Cause → abnormal behaviour (including criminal behaviour) believed to be due to the spiritual possession by the devil

Response → "encourage" the devil to leave the person (flogging, ice baths etc.)

- 1750 to 1800: biological abnormality & Proportional Responses Era

Cause → abnormal behaviour (including criminal behaviour) believed to be due to some (usually unknown) biological cause

Response → Crude biological responses (e.g., ice baths, destroy frontal lobe)

- 1800 to 1850L Institutionalization Era

Cause → Abnormal behaviour (including criminal behaviour) believed to be due to some uncontrollable cause

Response → separation & institutionalization (jail)

- 1850 to 1900: Medical Era

Cause → abnormal behaviour (including criminal behaviour) believed to be due to a medical problem

Response → operations and medications: birth of psychiatrists

- 1900 to 1930: Psychoanalytic Era

Cause → abnormal behaviour (including criminal behaviour) believed to be due to early childhood conflicts and unconscious impulses

Response → intensive individual therapy, we can't do that so nothing

- **1930 to 1950: Behavioural Era** (prisons incorporate psychology)

Cause → abnormal behaviour (including criminal behaviour) believed to be due to learning

Response → Behaviourally-based treatments (LOOK AT SLIDES)

- Aversion therapy (if alcoholic make them throw up so then they won't want alcohol)
- Reconditioning
- Systematic desensitization
- Behavioural modification programs

<u>Aversion Therapy</u>

Behavioural technique in which the individual is exposed to the stimulus of interest while forced to experience an unpleasant sensation in order to stop the behaviour

- Based on the classical conditioning work of Pavlov and Watson
- Key component is forming an association between the behaviour and the unpleasant sensation
- Early studies on rats and alcoholics (Antabuse)

Forensic applications include:

- Paedophiles
- Youth's committing deviant sexual offenses

<u>Behaviour modification programs</u>

Behavioural technique in which positive behaviours are encouraged through the implementation of a schedule of reinforcement (Operant conditioning)

- Based on the operant conditioning work of Skinner
- Also known as a token economy (cashed in for things they want)
- Originally employed in the 1960's in psychiatric hospitals

Forensic applications include:

- Youth custodial facilities (seen as nice approach)
- Male and female custodial facilities

- **1950 to 1980: Humanistic Era**

Cause → abnormal behaviour (including criminal behaviour) believed to be due to the need for people to self-actualize

Response → group therapy aimed at impacting empathy, unconditional acceptance and genuineness

Forensic applications include:

- Therapeutic jurisprudence
- Restorative justice

Themes:

- Healing emphasis
- Holistic approach
- Identification of psychological blocks
- Empathy for others
- Group support (i.e., not alone)

- **1980 to today: Cognitive Era**

Cause → abnormal behaviour (including criminal behaviour) believed to be due to faulty thinking (cognitive) styles

Response → alteration of thinking styles

<u>Cognitive skills programs</u>

- Most prevalent current approach to offender rehabilitation
- Based on an integration of the basic premises of the behavioural and cognitive approaches to psychology
- Suggests that the cause for much offending is due to the fact that offenders have abnormal thinking (cognitive) styles and that these styles may be positively impacted through a behaviourally-based intervention program

Thinking styles:

- Self control – the degree to which one is able to successfully cope with potentially negative urges, feelings, and reactions
  - ✓ Impulsivity (don't think before act)
  - ✓ Risk-seeking
  - ✓ Self-centredness
  - ✓ Temper
- Locus of control – the degree to which you believe that you control your fate or destiny (continuum from high internal to high external- no control over their lives) Offenders generally at the end of each spectrum
- Social problem solving – the ability to successfully identify and resolve socially based challenges such as disappointment, frustration, etc. in relationships
- Empathy – the ability to genuinely understand the situation of another
- Recognition of feelings – also known as emotional intelligence. The ability to recognize and control one's own feelings as well as recognize the feelings of others (offenders often have it in prisons because they don't want to get stabbed, but will forget about it when they get back to the real world)

Alternative correctional programs (not that important)

- Offence-based units – specialized units within the institution (prison) that house those who have committed a specific type of crime (i.e., paedophiles)
- Faith-based units – specialized units within the institution (prison) that house who have a strong religious or faith-orientation (leverage off their fate)
- Culture-based units – specialized units within the institution (prison) that house those who share a strong culture tie

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Parole

Legal component:

- Defined as the supervised release of an offender before the expiration of their sentence
- Generally carries with it a number of conditions which, if breached, result in the person being returned to prison to complete their sentence

Psychological component:

- Assessment of parole readiness
- Identification of factors related to conditions

Guiding principles for offender treatment **** (who gets to have time with the therapist with such little resources?)

1. Need principle – suggests that interventions should target known criminogenic needs (i.e., factors that related to offending) *needs regarding re-offending*

- Anti-social personality (trait)
- Anti-social attitudes and values (attitudes)
- Anti-social associates
- Family dysfunction
- Poor self-control & problem solving skills
- Substance abuse
- Lack of employment

2. Risk principle – suggests that interventions should target offenders who are at the highest risk of re-offending

- Static risk factor – refers to any factor that does not fluctuate over time and is not changed by treatment (e.g., age of first arrest, gender)
- Dynamic risk factor – refers to any factor that fluctuates over time and can be changed by treatment (e.g. employment, friends etc.)

Specific risk factors: some are static & some are dynamic, no need to worry about what is what

- Dispositional risk factors – factors that reflect the individual's traits, tendencies or styles
  - Demographics (age, gender)
  - Personality characteristics (psychopathology, deviant sexual arousal)
- Historical risk factors – factors related to events that have been experienced in the past
  - Past behaviour (violence, dealing with stress)
  - Age of anti-social behaviour
  - Childhood maltreatment
- Clinical risk factors – factors related to types and symptoms of mental disorders
  - Substance use
  - Psychological disorder
- Conceptual risk factors – factors related to aspects of the current environment
  - Lack of social support
  - Access to weapons
  - Access to victims
- Protective factors – factors that mitigate or reduce the likelihood of engaging in criminal activity (good stuff that's happening to them)
  - Prosocial environment (volunteer work, tafe course etc.)
  - Strong social support
  - Positive social orientation (hard-working, valuing education)
  - Strong attachments (especially with children)

3. Responsivity – suggests that interventions should match the general learning style of offenders (e.g., concrete vs. abstract)

Forensic psychology: the future?

- Encouragement of a broader definition of forensic psychology in Australia
- Increased educational opportunities in Australia
- Increased dialogue with forensic agencies regarding the need for research/organization collaborations
- Increased attention to new areas of forensic psychology such as the incorporation of new psychological models and theories (e.g., emotional intelligence), increased cross-national collaborative work due to the new global world (e.g., human trafficking), and addressing forensic technology issues (e.g., cyber-bullying)

EXAM

Lecture topics 3-10

All required readings from L3 onwards (MC) – every reading = 1 MC Q

→ 40 multiple choice questions = 80 points
→ 5 identify questions = 20 points
→ 6 short answer questions (10 points each) = 60 points

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